

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**MICHELLE MEIERHOFF**

Claimant

v.

AP-00-0474-818

CS-00-0472-290

**AMERICAN FOOD & VENDING CORP.**

Respondent

and

**PA MANUFACTURERS INDEMNITY CO.**

Insurance Carrier

**ORDER**

Respondent and Insurance Carrier (Respondent) request review of the Preliminary Hearing Order, dated April 7, 2023, issued by Administrative Law Judge (ALJ) Steven M. Roth.

**APPEARANCES**

Robert R. Lee, II, appeared for Claimant. Timothy A. Emerson appeared for Respondent.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held March 9, 2023, including Claimant's Exhibit 1 and Respondent's Exhibits A-C; the transcript of Evidentiary Deposition of Michelle Meierhoff, taken March 7, 2023; the transcript of Evidentiary Deposition of Beth Baker, taken March 29, 2023, including Exhibits 1-2; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

**ISSUES**

1. Did Claimant sustain personal injury from an accident arising out of and in the course of her employment with Respondent on October 5, 2022?
2. Did Respondent prove this matter is noncompensable because the accident or injury arose out of a personal risk, or from a neutral risk with no particular employment or personal character?

**FINDINGS OF FACT**

Respondent operates the employee café inside the Wolf Creek nuclear power plant. Claimant worked for Respondent as a dishwasher and prep cook. Claimant's work involved constant standing and walking. Claimant was not a direct employee of Wolf Creek, but she was subject to Wolf Creek's security procedures.

To get to her work area, Claimant parked at the employee parking lot, went through the first security gate and was subject to screening for explosives and contraband. After clearing the security screening, Claimant walked through secured doors using a badge identifying her as Respondent's employee. After walking through the secured doors, Claimant went down stairs and walked on a 200-foot-long sidewalk to enter the power plant and her work area. The sidewalk was made of concrete, with gravel on the sides. The secured areas and power plant are not open to the general public. Visitors must be accompanied by an employee holding a valid badge.

On October 5, 2022, Claimant went through Wolf Creek's security, and started to walk down the sidewalk to enter the power plant and start her shift. Claimant was not carrying anything. As Claimant was walking, she heard a pop in her left knee, followed by a sudden onset of pain preventing her from walking further. Claimant thought she had moved to one side of the sidewalk to allow others to pass, but Claimant was not certain whether she was on the sidewalk or gravel when she heard the pop. Claimant did not fall, and denied tripping over an object. Claimant declined a security guard's offer of a wheelchair, and eventually walked to her work area.

Claimant attempted to work for an hour and forty-five minutes, but was unable to continue. Claimant told her supervisor, Ms. Baker, about her knee popping while she was walking. Claimant was sent to Wolf Creek's medical department. An accident report was prepared, which stated Claimant was walking and heard a pop in her knee.

At the medical department, Claimant told the nurse she felt a pop and pain in her left knee while walking in the parking lot. According to the nurse's record, Claimant reported having problems with her knee for several years, and Claimant was morbidly obese. The nurse diagnosed internal derangement and pain in the left knee, and administered Tylenol and ice. The nurse also provided Claimant a crutch. The nurse and Ms. Baker agreed Claimant was incapable of working the rest of the day, and Claimant was sent home. A security guard assisted Claimant to her car in the parking lot with a wheelchair.

Claimant went to Coffey County Medical Center the evening of October 5. Claimant underwent an X-ray of the left knee, which was negative for fracture. Claimant was diagnosed with a strain and taken off work for two days.

Apart from the treatment at the medical department at Wolf Creek, Respondent did not authorize additional medical treatment. Claimant sought treatment from Yates Center Medical Clinic, and received treatment from Dr. Clark. Dr. Clark suspected Claimant sustained a small meniscus tear from the October 5 event, and recommended physical therapy and an MRI. Neither the physical therapy, nor the MRI, were authorized by Respondent. Dr. Clark released Claimant from her care on February 13, 2023, because Dr. Clark had no further treatment to offer.

At Respondent's recommendation, Claimant completed an application for short-term disability. Claimant stated on the application she was walking past security on October 5, her knee popped and she was unable to walk. Dr. Clark completed the physician section of the application, and stated Claimant was unable to work due to her unstable left knee. Claimant received short-term disability benefits for an unknown period of time.

Claimant also worked for another employer, Country Haven Inn, as a desk clerk. Claimant continues to work for Country Haven Inn in a seated position. Claimant chose not to return to work for Respondent. Claimant does not believe she is physically capable of performing her work for Respondent. Claimant's knee remains symptomatic, and Claimant has problems walking and rising from a seated position. Claimant cannot drive due to the condition of her vehicle, and not on account of her injury.

Ms. Baker confirmed Claimant stated she was walking, felt a pop in her left knee and sustained an injury. Claimant reported she experienced extreme pain when she walked. Claimant also stated she did not know what caused the pop. Ms. Baker further confirmed the sidewalk area where the event occurred is not accessible to the general public, and guests must be accompanied by an employee with a valid security badge. Ms. Baker confirmed the sidewalk is the only route to reach the working area.

Claimant sought medical treatment and temporary total disability compensation, and a preliminary hearing took place before ALJ Roth on March 9, 2023. ALJ Roth subsequently issued the Preliminary Hearing Order. ALJ Roth concluded the accident was compensable because Claimant's work required her to go through Wolf Creek's security and the accident was connected to her work for Respondent. ALJ Roth also concluded Claimant was injured while taking the only available route to her work area. Respondent was ordered to provide a list of two potential authorized treating physicians, but temporary total disability compensation was denied. These review proceedings follow.

### **PRINCIPLES OF LAW AND ANALYSIS**

In its application for review, Respondent contends the accident is not compensable because it was the product of either a personal risk or a neutral risk with no particular employment or personal cause. Respondent also raised prevailing factor as an issue, but

did not address the issue in its brief. Claimant argues the Preliminary Hearing Order was decided correctly, and should be affirmed.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.<sup>1</sup> The provisions of the Workers Compensation Act shall be applied impartially to all parties.<sup>2</sup> The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.<sup>3</sup> After the employee establishes a *prima facie* case, the employer must prove a statutory defense, such as a neutral risk, bars compensation.<sup>4</sup>

**1. Claimant proved she sustained personal injury from an accident arising out of and in the course of her employment with Respondent.**

Initially, Claimant must prove she sustained a compensable injury. To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.<sup>5</sup> The accident must be the prevailing factor causing the injury, and “prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.<sup>6</sup> Furthermore, the accidental injury arises out of employment only if there is a causal connection between work and the accident, and if the accident is the prevailing factor causing the injury, medical condition and resulting disability or impairment.<sup>7</sup>

It is undisputed Claimant suffered a sudden onset of symptoms of an injury as a result of walking in Wolf Creek’s secured area on her way to assume her work duties for Respondent on the only available route. Claimant’s description of the event is consistent. Dr. Clark stated the event was the cause of Claimant’s symptoms and current medical condition. The route was not open to the general public, and Claimant would not have

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<sup>1</sup> See K.S.A. 44-501b(a).

<sup>2</sup> See *id.*

<sup>3</sup> See K.S.A. 44-501b(c).

<sup>4</sup> See *Johnson v. Stormont Vail Healthcare, Inc.*, 57 Kan. App. 2d 44, 52-53, 445 P.3d 1183 (2019), rev. denied, 311 Kan. 1046 (2020).

<sup>5</sup> See K.S.A. 44-508(d).

<sup>6</sup> See K.S.A. 44-508(d), (g).

<sup>7</sup> See K.S.A. 44-508(f)(2)(B).

been in the area if she was not working for Respondent. Claimant's work requires walking. The undersigned finds Claimant's walking in a secured area en route to her work station is connected to her work for Respondent. The accident was the cause of Claimant's current knee symptoms and medical condition. Claimant proved she sustained a left knee injury from an accident arising out of and in the course of her employment with Respondent.

**2. Respondent did not prove Claimant's injury or accident were the product either of a personal risk or a neutral risk with no particular employment or personal character.**

The primary issue is whether Respondent met its burden of proving the injury or accident were the product of a risk personal to Claimant or a neutral risk with no particular employment or personal character. The Board addresses each defense in turn.

Respondent failed to prove Claimant's injury or accident arose from a personal risk. The record from Wolf Creek's medical department contains a history of prior knee problems, but there is no evidence Claimant suffered from popping or debilitating knee pain as a result of a personal characteristic. No medical evidence suggests Claimant's injury or medical condition was the result of Claimant's health. Claimant was in Wolf Creek's secured area due to her work. Claimant was not walking in the secured area for reasons personal to Claimant. Respondent failed to prove Claimant is barred from compensation under K.S.A. 44-508(f)(3)(A)(iii).

Respondent also failed to prove Claimant's injury or accident arose from a neutral risk with no particular employment or personal character. The Workers Compensation Act does not deem noncompensable all injuries from neutral risks, but only those injuries from neutral risks with no particular employment or personal character.<sup>8</sup> In determining whether the neutral risk defense applies, the relationship of the event to the employment is considered, rather than the isolated movement, itself.<sup>9</sup> If Claimant's walking in the secured area is connected to the requirements or conditions of her work for Respondent, the neutral risk defense does not apply.

Due to Claimant's employment with Respondent, she was required to undergo an elaborate security protocol requiring walking. Once she reached her work area, Claimant was required to stand and to walk continuously. Claimant was walking in the secured area because her work for Respondent required it. If Claimant did not successfully navigate Wolf Creek's security, she could not work. Thus, Claimant's walking at the time of the

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<sup>8</sup> See *Johnson*, 57 Kan. App. 2d at 51-52.

<sup>9</sup> See *id.* at 52.

accident was work-connected. Because the accident and resulting injury were connected to Claimant's work for Respondent, the neutral risk defense does not apply. Therefore, the accident and resulting injury are compensable.

Respondent's reliance on *Adams v. Hospira, Inc.*<sup>10</sup> is misplaced. In *Adams*, the employee was walking to an area outside the employer's premises to smoke because the employer prohibited smoking on its premises. While walking, the employee slipped, fell and sustained an injury.<sup>11</sup> In denying compensation, a single Board Member looked to the relationship of the employee's walking to a smoking area to the employment. The accident and injury were not connected to employment because the employee was engaging in activity prohibited by the employer. Compensation was not denied merely because the employee was walking.<sup>12</sup> In contrast, Claimant was not engaged in activity prohibited by Respondent when she was injured. Instead, Claimant was engaged in an activity associated with her employment. *Adams* does not apply.

In conclusion, Claimant proved she sustained a left knee injury from an accident arising out of and in the course of her employment with Respondent. Respondent did not prove the defenses in K.S.A. 44-508(f)(3)(A) barred compensation. Accordingly, the Preliminary Hearing Order should be affirmed.

### AWARD

**WHEREFORE**, it is the finding, decision and order of the Appeals Board the Preliminary Hearing Order issued by ALJ Roth, dated April 7, 2023, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2023.

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WILLIAM G. BELDEN  
APPEALS BOARD MEMBER

c: (Via OSCAR)

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<sup>10</sup> *Adams v. Hospira, Inc.*, No. 1,069,056, 2014 WL 3055469 (Kan. WCAB June 12, 2014).

<sup>11</sup> *See id.* at \*1.

<sup>12</sup> *See id.* at \*3.

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Hon. Steven M. Roth